

INDIANA

Issue 17.4 JUL/AUG 2008

court**times**

THE LAW
OUGHT
TO BE KING

INDIANA JUDGE REPRESENTS
GUANTANAMO DETAINEES

DEFENDING
THE RULE OF LAW

3

Judicial Conference Preview **2** • ADR in Family Law Cases **8** • Primer on Family Medical Leave **14**

CONTENTS

Defending the Rule of Law..... 3

Q&A With Judge Steve David 6

Alternative Dispute Resolution in
Family Law Cases 8

Records Management Committee:
25 Year Celebration & Farewell to
John Newman 10

BITS & BYTES

The Odyssey Continues: CMS
Deployment Under Way at 11 New
Sites 12

A Primer on the Family & Medical
Leave Act (FMLA) 14

Circuit Court Clerks Meet in French
Lick 15



PHOTO: Ken Cave

JUDICIAL CONFERENCE

TUESDAY • WEDNESDAY • THURSDAY

SEPTEMBER 9-11

INDIANAPOLIS

HIGHLIGHTS

PLENARY SESSIONS INCLUDE:

- Presentation by Judge Steve David, Chief Defense Counsel to the Office of Military Commissions
- Review of Indiana's New Judicial Code of Conduct

EDUCATION SESSIONS ABOUT:

- Why it mattered that Lincoln was a lawyer
- Dealing with the media
- Recent legislation
- Personal Safety
- Connecting to other cultures around us

FOR A DETAILED AGENDA AND ATTENDANCE ELIGIBILITY, VISIT
courts.in.gov/center/education

DEFENDING THE RULE OF LAW

“ ... (I)n America the law is King. For as in absolute governments the king is law, so in free countries the law *ought* to be king; and there ought to be no other. ”

from *Common Sense*
by Thomas Paine

IN JANUARY 1776, THOMAS PAINE published a pamphlet with profound influence that was enthusiastically embraced by people who would be called upon to perform extraordinary tasks in order to gain their freedom. Over two centuries later we face new challenges, and people are again called to action—this time in defense of those freedoms. One of those people is Boone County Circuit Court Judge Steven David, who is also a Colonel in the United States Army. In September 2007, William Haynes, Department of Defense General Counsel, appointed him to the position of Chief Defense Counsel to the Office of Military Commissions.

His position has placed him over the defense team of lawyers representing the Guantanamo Bay detainees. Colonel David was chosen from an elite group of only four nominees. Each of the Advocates General of the four branches of our military services made one recommendation for the position. The stated mission for these lawyers is: “To vigorously, zealously, and effectively represent individuals brought before military commissions, within the bounds of law.” The magnitude and difficulty of the assignment is summed up by Colonel David in his answer to a media question about how he intended to fulfill his new assignment: “You’re asking me to tell you how we’re going to get to a place we’ve never been, with a map I don’t have.”

Shortly after assuming his new role, a Boone County criminal defense lawyer sent Colonel David the above quote from Thomas Paine’s classic essay,

which influenced decisions leading up to the war of independence from England. Colonel David has adopted it as his daily reminder, and he includes it in all his email correspondence. To Colonel David, the quote by Thomas Paine “makes sense not only for the fledgling nation for whom it was written, but also for this powerful nation that is struggling in this time of fear with the issue of whether we abandon the rule of law.”

President George W. Bush issued a Military Order on November 13, 2001, establishing Military Commissions to provide for the detention, treatment and trial of certain non-citizens in the war against terrorism. The justification for the use of these presidential military commissions, according to a November 30, 2001, New York Times Op-ed article by then White House Counsel, Alberto R. Gonzales, was to spare “American jurors, judges, and courts the grave risks associated with terrorist trials. They allow the government to use classified information as evidence without compromising intelligence or military efforts. They can dispense justice swiftly, close to where our forces may be fighting, without years of pretrial proceedings or post-trial appeals.” The Military Commissions were set up in Guantanamo Bay, Cuba.

The United States Supreme Court ruled, in the case of *Boumediene v. Bush*, June 12, 2008, that foreign Guantanamo detainees have rights under the U.S. Constitution and may challenge their detention in

CONTINUED ON NEXT PAGE

civilian courts. This is the fourth case involving Guantanamo Bay that has been decided by the Supreme Court, and the rulings in all of the cases have consistently found that detainees do have rights under our Constitution. The administration had argued that the detainees have no constitutional rights and courts have no jurisdiction over their cases. In response to the adverse rulings, the administration set up secret military review panels, known as “combat status review panels,” and Congress passed the Detainee Treatment Act, which formalized the process and also stripped federal district courts of the authority to hear new detainee cases.

On June 29, 2006, the U.S. Supreme Court ruled in *Hamdan v. Rumsfeld* that the Bush administration’s planned military commissions at Guantanamo Bay violated the laws of war and international conventions. At the request of the White House, Congress then enacted a new law—the Military Commissions Act—establishing military commissions and creating the position of Chief Defense Counsel, to which Colonel David was appointed.

It was after a recent Indiana Judicial Conference education session in Indianapolis that Judge Steven David sat down to discuss his unique role as Colonel Steven David, Chief Defense Counsel to the Office of Military Commissions.

He has brought to his offices in Washington, DC and Guantanamo Bay, Cuba his Hoosier values and his years of experience as a trial court judge. Steve David is an Indiana native son. He grew up in Bartholomew County, moving to Boone County after finishing his undergraduate and law school education. He graduated from Indiana University Law School in Bloomington and was later elected as a Boone County Judge, where he has served for the past 13 years. Judge David says that he has always wanted to serve as a trial court judge. When not performing his duties on the bench, or serving his country in his role with the U.S. Army, he is actively involved in his community serving on the board of directors for a number of local nonprofits. He also serves on the Board of Directors of the Indiana Juvenile and Family Court Judges.

Judge David has exhibited his generous nature in a very personal way. In 1994 his niece was on dialysis and needed a kidney transplant. Medical tests indicated that he was a match for her, and Judge David donated one of his kidneys. His niece has since graduated from college, is in great health, and teaches in the Center Grove school system in Indianapolis.

He takes on his assignment with dedication and purpose and states that “we are defending the rule of law at a time when our nation’s integrity is on trial.” He realizes that he is going

into an uncharted area of American jurisprudence and is under pressure from the prosecution team to move the cases along. “I will move as quickly as I can, but we will not be bullied by the government. I believe that this is a defining moment in our history, and we are going to take our time and do it right,” says Colonel David.

One of the pivotal issues in the pending trials concerns the use of torture to obtain information and extract confessions. The most contentious dispute involves the alleged use of waterboarding. Colonel David is incredulous that there is even talk about torture. “I can understand this dialogue in 2008 BC,” he observes, “but not in 2008 AD.” The treatment of detainees over their months and years of captivity at Guantanamo Bay seriously undermines the credibility of the military lawyers assigned to provide them with a legal defense, says Colonel David.

Colonel David asks these questions: “How do we convince a detainee that we are there to help them, to gather evidence, to receive due process? How do we convince them that by accepting the assistance of counsel they are not also accepting our system of government and justice? How do we convince them that we are not spies, not interrogators, not FBI, not CIA?”

Colonel David explained the dilemma of their situation by citing a change in their approach when talking to the detainees.

They decided to give defense counsel the option of meeting with the detainees wearing civilian clothing instead of uniforms so as to enhance the detainees’ comfort level in contrast to seeing interrogators in military uniforms. The result was unexpected. The detainees were insulted that they would come to visit them out of uniform and suspected the lawyers of trying to engage in subterfuge. The trust between lawyer and client is not at a very high level, and it may never be, according to Colonel David.

I can understand this dialogue [regarding torture] in 2008 BC, but not in 2008 AD.

Recently the government brought charges against five detainees, accusing them of planning and assisting in the September 11th attack. The prosecution wants to get these cases to trial as soon as possible. They are seeking the death penalty against most of them. Colonel David said that he found these arraignments and the government’s rush to judgment very disturbing. Many of these individuals have been held in captivity for years without being able to speak to anyone except their interrogators. He says: “the right to counsel is fundamental to our system of American Jurisprudence. ‘Offering’ the right to counsel after years of what these accused have endured is like offering a stale doughnut to a man dying of cancer.”

On the military attorneys, Colonel David says: “there is a tendency sometimes for people to come to the incorrect conclusion that military attorneys are not qualified or are only giving

AS A COLONEL IN THE
U.S. ARMY, BOONE COUNTY
JUDGE STEVE DAVID SERVES
AS CHIEF DEFENSE COUNSEL
TO THE OFFICE OF
MILITARY COMMISSIONS.



60% effort. That is ridiculous. Look at the Hamdan case. The military attorneys, men and women, did just great. The people I am fortunate enough to work with are some of the smartest, hardest working, and most zealous advocates I have ever seen. They are defending the rule of law. That's what we expect in our country, and that's what we expect in Indiana. We are working to preserve the integrity of our system of justice.

I am not suggesting that everyone will be supportive of our role, but they should at least understand it. I have people under my command who are working 50, 60 and 70 hours a week. Everyone should be proud of these women and men defending our constitution and our rule of law."

Colonel David has a fundamental problem with the military commissions. They have been set up in these cases as a substitute for our established judicial institutions: our federal courts and our courts of military justice. "Why are we using an untried, flawed system when everyone in the world is watching us, and running the risk of damaging the integrity of our legal system? That is what makes this so frustrating. The system they have created is not very good. We can do better. Why aren't we using our Federal Courts or our Uniform Courts of Military Justice to litigate these cases and to decide the serious issues concerning classified information, national security, and the use of torture? Why aren't we using a system that has proven itself rather than a system that is brand new?" he asked. Despite his concern about using the military commissions, he said he is resolute in fulfilling his obligations.

Some people ask him how he can represent people who have been accused of attacking the very nation he is defending through his service in the United States military. The answer to that question goes to the heart of who he is as a man, as a judge, as an American. The Boone County Circuit Court proudly displays a flag of the United States. In Judge David's chambers there hang two other flags: a U.S. Army flag and a flag honoring the victims of 9/11. He says candidly that he cannot imagine the deep emotions felt even today by these families. On that day, he was glued to the TV like the rest of the nation and still gets goose bumps thinking of those tragic events. He is an American patriot who signed up for ROTC in 1975 when the nation was still trying to recover from the Vietnam War.

In his mind, being patriotic and flying the flag of honor for the 9/11 victims is not inconsistent with his job as Chief Defense Counsel. He and his team of lawyers are defending this great nation—not on the battle fields but in these halls of justice.

In conclusion, Colonel David says that his challenge "is very similar to that of every trial court judge in Indiana: be fair, be firm and be committed to doing what is right, not what is politically correct. I think our nation should expect nothing less from my office. It is not about the people or the offense for which they are charged. We are better than that. It is about defending the rule of law."

By James F. Maguire,
Staff Attorney, State Court Administration

Q&A

QUESTIONS AND ANSWERS WITH JIM MAGUIRE AND JUDGE STEVE DAVID ON HIS EXPERIENCE AS CHIEF DEFENSE COUNSEL FOR THE OFFICE OF MILITARY COMMISSIONS.

JM: WHAT WOULD YOU BE DOING IN THE U.S. ARMY IF YOU DID NOT HAVE THIS ASSIGNMENT?

SD: I just had received notice of my new assignment in Arlington, VA, a dream job, as the Chief Reserve Trial Judge for the Army, and as the Commander of Army's only Reserve Military Judge Unit. I would have traveled out there about once a month to hear cases.

JM: WHAT ARE YOUR MAJOR RESPONSIBILITIES AS CHIEF DEFENSE COUNSEL?

SD: It is sort of like being the Senior Partner in a large 50-plus law firm that specializes in national security cases on steroids. I am in charge of the legal defense team and have responsibility for the over-all management of the office, training, fighting for resources, professional responsibility issues, due diligence on attorneys nominated or applying to represent defense, giving opinions on a wide variety of issues, research, resolving global issues, developing and implementing ideas and strategy, and helping our defense team do a better job.

JM: DO YOU HAVE ANY GUIDING WORDS FOR THOSE UNDER YOUR COMMAND?

SD: Yes. I'll take a bullet for you, but I want it to be in the chest not in the back. My philosophy as a Commander and as a Judge can be boiled down into eight simple words...Work hard. Do good. Be proud. Have fun.

JM: CAN YOU DESCRIBE YOUR DAYS AT WORK?

SD: I describe my days as bad, really bad and crappy. But it is also the most challenging, rewarding, frustrating job I have ever had.

JM: DO YOU HAVE ANY FAVORITE SINGERS OR SONGS THAT HELP YOU IN THIS DIFFICULT ASSIGNMENT?

SD: I have two that come to mind. Alan Jackson is a country singer who wrote the lyrics and sang the song "I Wish I Could Back Up." The opening line is "I wish I could go back and start all over." In many ways I wish we could go back and start over with how we dealt with the detainees, but we can't. Toby Keith is another favorite country singer and he sings a song called "Ain't No Right Way." The refrain in his song that I like is: "Ain't no right way to do the wrong thing." I am reminded of this song as the White House and Congress try to wrestle with torture and the definition of torture and waterboarding and all of the conduct that is so not who we are as a nation.

JM: I KNOW YOU ARE A SPORTS FAN, SO ARE THERE ANY SPORTS ANALOGIES ON A TYPICAL DAY FOR YOU IN YOUR ROLE AS CHIEF DEFENSE COUNSEL?

SD: Well, it is baseball season, so I can use that sport. I walk up to the plate each day and am handed a different bat, sometimes a plastic bat, maybe a

tennis racket, and sometimes a ping pong paddle. Occasionally I don't have anything to swing but my bare hands. The pitches come two or three at a time, sometimes they are baseballs, but they are also bowling balls, rocks, gravel and various other things I can't mention. The pitches come at me fast, slow, some curve balls, and some knuckleballs. I do my best to make contact. Sometimes I make good contact, sometimes not, but I do my best. I am comfortable at the plate because I have seen many of the pitches over the past 13 plus years on the bench. Many people, and most judges, have similar days.

JM: THE ISSUE OF WATERBOARDING AND THE USE OF TORTURE HAS BEEN IN THE HEADLINES. DO YOU HAVE ANY THOUGHTS OR OPINIONS ON THE TOPIC?

SD: I'm not excusing torture in any circumstance. The experts will tell you that torture is unreliable. Ask yourself what someone is going to have to do to you before you would say anything they wanted to hear. My main concern is that I want people to continue to want to serve our country. I shudder at the thought of an American serving somewhere and being captured by some rogue nation, or rogue entity, uniformed or not, and the captors having a dialogue about whether to use torture. I hope they would not have that dialogue, but if they did, I would want one of them to say that the US doesn't use torture. And, that they will be angry if we do that to one of their citizens and they will come after us and hunt us down if we do. But where is that argument now? How can we expect them to say that we do not use torture?

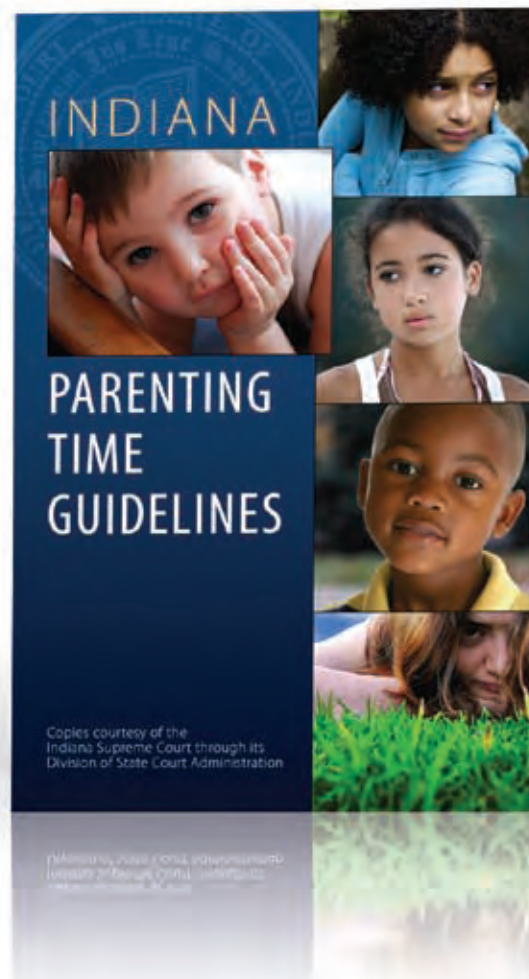
JM: YOU HAVE STATED THAT ALL EYES ARE ON US AS WE BEGIN TO BRING JUSTICE TO THE DETAINEES AND WE ARE AT A CRITICAL POINT IN OUR HISTORY. WHAT IS YOUR BIGGEST CONCERN?

SD: I have traveled all over the world to seminars and conferences and people have told me that the United States system of justice is held in high regard. Our system is the vanguard of criminal justice systems. They have said that we are the epitome of justice, objectivity, due process, and constitutional law. But when they look at the treatment of the detainees and the use of Guantanamo Bay, they ask how we could have done this? They ask why we are doing this. And, what is our answer, because we got scared?

JM: IS THERE ANY MESSAGE OR THOUGHT YOU WOULD LIKE TO CONVEY TO YOUR MANY FRIENDS AND ADMIRERS BACK HOME?

SD: To all of the hard-working lawyers in Indiana, don't ever underestimate the significance of what you are doing. Every time you step into court people unfamiliar with our justice system are watching you and forming opinions about it. So be prepared and be professional as you represent your clients and uphold the rule of law. I am looking forward to returning to Boone County and spending the rest of my legal career on the bench. Boone County has been very supportive, and so has the Indiana Supreme Court. I have a tremendous staff and Judge Pro Tem Jeff Edens and Commissioner Sally Berish have done a great job in my absence. I believe I will be a better Judge because of this experience. Many thanks to everyone back home in Indiana.

UPDATED PARENTING TIME GUIDELINES BOOKLETS NOW AVAILABLE



THE DIVISION OF STATE COURT ADMINISTRATION HAS RECENTLY RE-PRINTED THE INDIANA PARENTING TIME GUIDELINES IN BOOKLET FORMAT FOR DISTRIBUTION TO TRIAL COURTS WITH DOMESTIC RELATIONS JURISDICTION. MOST COUNTIES ARE ALLOTTED ONE BOX OF 200 BOOKLETS. WE WILL ATTEMPT TO FILL REQUESTS FOR ADDITIONAL BOXES. IF YOU HAVE NOT RECEIVED NEW BOOKLETS, YOU MAY PICK THEM UP AT THE FALL JUDICIAL CONFERENCE AT THE FAMILY COURT PROJECT TABLE. PLEASE CONTACT DAWN BROWN AT STATE COURT ADMINISTRATION AT 317.234.1452 TO MAKE PICK-UP ARRANGEMENTS.

ADR Alternative

in Family Law cases

Judge Elizabeth Tavitas presides in Lake County Superior Court Civil Division 3 where she partners with magistrates and family law attorneys to help parents spend less time in court and more time focused on their children and areas of agreement.

Across Indiana, courts are embracing cooperative parenting and Alternative Dispute Resolution programs to give litigants the tools needed to become partners where possible and adversaries as a last resort.

Following a November 2007 seminar, 75 Lake County attorneys signed a pledge to work with the cooperative parenting plan and they still meet monthly.

"It's a very collaborative approach between the bench and the bar. We're all on the same page and we're keeping everyone's views in mind," said Judge Tavitas. "It's a child-focused perspective. An adversarial setting is not designed to deal with marital discord. People still need to be parents to their children"

Less than an hour's drive away in St. Joseph County, Beth Kerns agrees that the collaborative approach works best because it focuses on families. She began her career as a counselor 23 years ago and now serves as Director of the Domestic Relations Counseling Bureau, Family Court Project Co-

ordinator, and Alternative Dispute Resolution Plan Administrator.

Kerns said if a member of the bench asked her about the advantages of ADR, "I would tell a judge you will not be seeing these people over and over again."

"It's a child-focused perspective. An adversarial setting is not designed to deal with marital discord."

In Johnson County, Court Administrator Donna Sipe has seen the evolution in use of alternative dispute resolution. "More than 10 years ago, there was mandatory mediation in almost all domestic relations cases. Judges did that for two reasons: mediated results in family law cases are fairer and last longer," Sipe said.

One tool Lake County uses is a parental cooperation program created by Charles Asher. The website is:

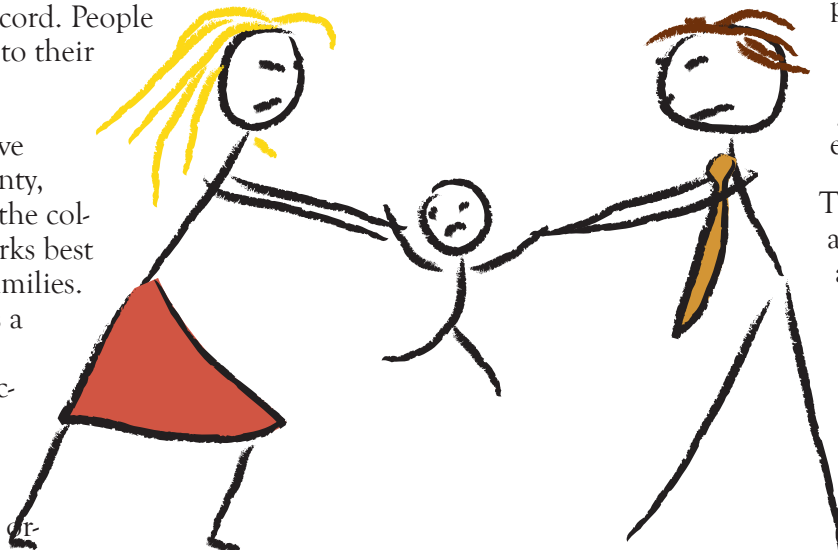
www.uptoparents.org

"The goal is to leverage as many resources as possible before families come to court, resulting in more agreements and a less crowded docket," said Judge Tavitas.

"In these highly contested cases, parents never feel good after the trial is over. Problems won't be solved by a judge's order. You could have a five-day trial on custody and they are both great parents. Then they have torn apart each other on the stand. It's too late for a judge to get them to be cooperative," said Judge Tavitas.

The goal is to help parties agree on as much as possible and leave a smaller number of issues to be argued before a judge

How do you convince litigants that this approach is advantageous? "The parties know their lives and situations much bet-



Dispute Resolution

TOTAL NUMBER OF CASES ACCEPTED (BEG. 12/1/2006)

Plan County	Total Cases Accepted	Dissolutions w/children	Dissolutions w/o children	Paternity	Other
Allen	287	219	33	35	0
Boone	0	0	0	0	0
Brown	12	11	0	1	0
Clark	43	43	0	0	0
Crawford	0	0	0	0	0
DeKalb	0	0	0	0	0
Henry	11	7	0	4	0
Jackson	127	54	68	5	0
Johnson	222	86	136	0	0
Lake	280	133	37	92	18
Lawrence	168	117	31	20	0
Marion	519	216	7	296	0
Martin	0	0	0	0	0
Monroe	192	120	36	36	0
Montgomery	7	3	0	4	0
Orange	0	0	0	0	0
Owen	43	25	5	13	0
Perry	0	0	0	0	0
Pike	0	0	0	0	0
Porter	84	7	0	77	0
Putnam	0	0	0	0	0
St. Joseph	7	7	0	0	0
Shelby	36	28	5	1	2
Starke	0	0	0	0	0
Tippecanoe	57	35	4	18	0
Total	2095	1111	362	602	20

ter than a judge who hears them for two hours. I tell them they have the opportunity to make decisions,” Judge Tavitias said.

She has found that with ADR or private mediation, even in the most difficult cases at least some of the issues can be resolved outside of court.

It is essential to have the support of judges, litigants and members of the bar, especially when ADR programs become mandatory, according to Judge Tavitias.

“We had a long history in Johnson County of judicial encouragement and enforcement of ADR. It was very common for judges to require mediation in a civil case before they got a court date but there was a little bit of discomfort for the rule requiring it,” Sipe said.

“Attorneys have come to find that mediation isn’t an obstacle to getting to court and they are able to get results they wouldn’t have been able to get in court,” Sipe added.

In St. Joseph County, they have developed a screening tool. “It points out the issues and the real problem areas,” said Kerns. “Maybe they need mediation, community intervention or a parenting class. It could be they need a combination of things.”

Indiana’s first Alternative Dispute Resolution plan started 10 years ago in Allen County, and the success of that pilot program led the Indiana General Assembly to pass legislation in 2003 authorizing the creation of ADR programs in each of Indiana’s 92 counties. Today there are programs in 24 other counties: Boone, Brown, Clark, Crawford, DeKalb, Henry, Jackson, Johnson, Lake, Lawrence, Marion, Martin, Monroe, Montgomery, Orange, Owen, Perry, Pike, Porter, Putnam, St. Joseph, Shelby, Starke and Tippecanoe.

Counties wishing to participate in an ADR program must develop an ADR plan that is consistent with the statute and that is approved by a majority of the counties’ judges with jurisdiction over domestic relations and paternity cases. The Executive Director of the Indiana Supreme Court, Division of State Court Administration must approve the plan. The counties are required to file an annual report summarizing the ADR program each year. The Division of State Court Administration offers an ADR Plan Starter Kit, which is available online, and also provides technical assistance in developing a plan that is individualized to the needs of each county while still meeting the requirements of the statute.

CONTINUED ON PAGE 11

25 YEAR

Celebration & Farewell

TO JOHN NEWMAN

[Editor's Note: This is a banner year for the Supreme Court's Records Management Committee and the start of a new era. Friends and co-workers praise the dedication of a gentleman who was instrumental in the success of the committee.]

LET THE RECORD SHOW that on September 19, 2008, the Records Management Committee of the Indiana Supreme Court will celebrate its twenty-fifth (25th) anniversary. The Committee was created by Supreme Court Rule and is charged with the duty to study the practices, procedures, and systems for the maintenance and management of court records and to make recommendations to the Supreme Court for their modernization, improvement and standardization. Mr. John J. Newman, Director of Information Management for the Division of State Court Administration, was present at its inception and recalled that the Committee evolved from an ad hoc group that was created in 1980 to provide direction to trial courts on the creation, maintenance, access to and disposal of records. With the adoption of Administrative Rule 4 in September 1983, the Records Management Committee became an official committee of the Indiana Supreme Court.

John Newman's first association with the Records Management Committee was in his capacity as Indiana State Archivist and Deputy Director of the Indiana Commission on Public Records. However, when the Supreme Court adopted an early recommendation of the Committee to create a Records Management Section within the Division of State Court Administration, John became its first Director. He has held this position since July 1986. Mr. Newman recently announced his retirement, effective at the end of July

2008. At the latest Records Management Committee meeting held on June 13, 2008, Committee Chair Indiana Supreme Court Justice Brent Dickson thanked John for his many years of service to the committee, for which John received rousing applause from its members.

In its twenty-five year existence, the Committee has studied a variety of topics, including retention schedules for court records, microfilming, document imaging, preservation of records, courthouse security, application of technology, confidentiality of records, and video-conferencing, just to name a few. While dealing with the immediate problems of the day, the Committee has always kept one eye toward the future when making its recommendations to the Supreme Court. For example, the revisions to Trial Rule 77 that created the concepts of the chronological case summary (CCS) and the record of judgments and orders (RJO) were made with the future automation needs of the court system in mind.

The Committee was recently expanded to consist of twenty-six (26) members, and many of the new members attended their first meeting on June 13th. In addition to Justice Dickson, the membership includes eleven (11) trial court judges and judicial officers, four (4) staff members from the administrative agencies of the Indiana Supreme Court and the Court of Appeals, three (3) circuit court clerks,

three (3) court administrators, two (2) practicing attorneys, the Indiana Public Defender, and the Executive Director of the Prosecuting Attorney's Council.

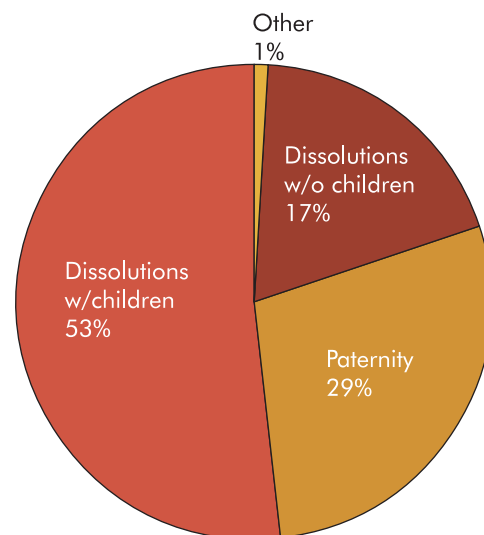
At its most recent meeting, the Committee addressed issues involving access to information (Administrative Rule 9), cooperation between the Records Management Committee and JTAC (Trial Rule 77), retention and disposal of records (Administrative Rule 7), document imaging and microfilming (Administrative Rule 6), video-conferencing (Administrative Rule 14), and creating a special needs case type (Administrative Rule 8). New committee member Glenn Lawrence, Marion County Court Administrator, remarked that he found the issues interesting and the discussions stimulating. The liaison for the Committee is Tom Jones, Records Manager, Division of State Court Administration, tjones@courts.state.in.us.

By Thomas Q. Jones,
Records Manager,
Division of State Court Administration

PHOTOS (top to bottom): Newman reflects on his long career with the state; A crowd gathered in the Supreme Courtroom to celebrate Newmans's contributions; Justice Brent E. Dickson presents Newman with a certificate of recognition from the Indiana Supreme Court.



CASE TYPES ACCEPTED



Kerns said she received great support, ideas and input from courts in other counties and other states. “Look to the other programs and counties. They are just a phone call away,” she said.

Sipe added that going through the nuts and bolts of your ADR proposal with the Division of State Court Administration can help make a submission even stronger because you can learn what has worked well in other counties and what needs to be adjusted.

“And, as with any new program, you have to consider costs and sustainability,” Sipe said.

Information on Alternative Dispute Resolution is online at: courts.in.gov/adr.

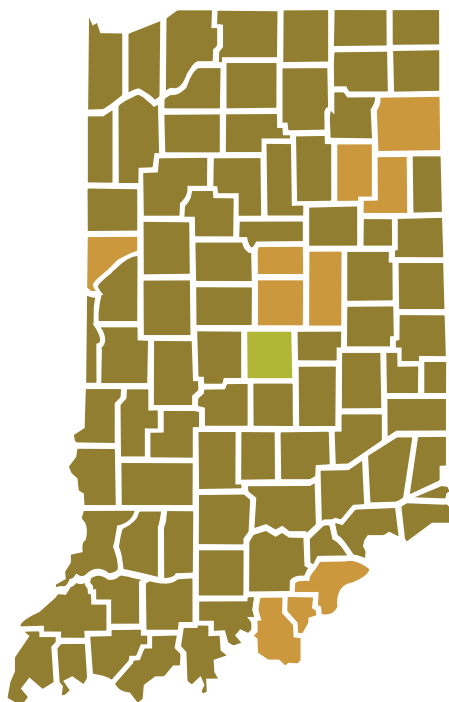
The contact person for assistance in the implementation or use of ADR in Domestic Relations cases is Family Court Project Manager, Loretta Oleksy, loleksy@courts.state.in.us.



By Loretta Oleksy,
Family Court Project Manager,
State Court Administration

PHOTOS: William Marks

THE ODYSSEY CONTINUES: CMS DEPLOYMENT UNDER WAY IN 10 NEW COUNTIES



Phase II counties are located in four regions of the state:

NORTHEAST

Allen
DeKalb
Huntington

WEST

Warren

CENTRAL

Marion
Small Claims
Courts

Hamilton
Madison
Tipton

SOUTH

Clark
Floyd
Harrison

With the successful completion of the first phase of deployment of the state Odyssey case management system (CMS) in the 10 pilot court sites (9 Monroe County trial courts and one Washington Township, Marion County small claims court), work is under way to prepare the next deployment in 10 potential county sites. These 10 counties are home to 35 trial courts, eight small claims courts, and 14 city and town courts.

The Indiana Supreme Court selected Odyssey as the state CMS and is in the process of offering it to the courts and clerks, at no cost to the counties, with the goal being that Odyssey will eventually link all courts in the state with each other, with other state agencies, and with others who need and use court information. Already, through a public web site, the Indiana Supreme Court provides the Odyssey case information to the public at no cost. Odyssey is also being interfaced with the state e-citations project to provide a seamless, electronic, end-to-end process for the issuance, filing and transmission to the Bureau of Motor Vehicles, of traffic citations. Phase II, the current phase of this monumental project, moves Indiana one step closer to the ultimate goal of interconnected courts and state agencies for an efficient and effective judicial administration system.

“We are very excited to have 10 more sites preparing to use Odyssey. Our staff is working hard to prepare for the next set of courts to receive Odyssey. Teams are in the process of visiting the court and clerk offices in those counties to identify unique local needs and procedures,” said Mary L. DePrez, Director and Counsel for Trial Court Technology with the Division of State Court Administration.

With the hard work and commitment of the Monroe County judges, their staffs, the clerk of court, Jim Fielder, and his staff, the first deployment team learned many lessons that will improve the Phase II deployment. The successful deployment of a case management system is a complex process that entails extensive planning and training. Some of the steps in that process are:

Planning

The planning process includes meeting with leadership from each court and clerk’s office to gather and document preliminary information such as number of employees that will use the system, existing systems and processes, local rules and practices, equipment and network needs, financial information, etc.

For more information about JTAC initiatives, see courts.IN.gov/jtac



PHOTO: William Marks

Debra Weatherholt, former Perry County Clerk and current Subject Matter Expert for JTAC, demonstrates the Odyssey CMS in Allen County for local court and clerk staff.

Data Conversion

Data conversion means taking data from an existing case management system and converting it to a format that is usable by the Odyssey CMS. The first step in data conversion is gathering specific relevant information from each county.

Configuration

Once local information is collected about the users, what access each should have, local practices and rules, Odyssey is then configured to meet each county's specific needs. For example, requirements of local rules may necessitate that Odyssey be configured

to reflect those local variables. Configuration typically takes place during the month before each county's launch date.

On-Site Presence

Once a Go-Live date is set, deployment staff will hold numerous meetings with court and clerk leadership, present on-site Odyssey demonstrations and provide opportunities for local staff to ask questions. A newsletter and emails provide continuous communication with the local leadership and staff.

Training

A major part of the deployment process is hands-on training for all court and clerk employees who will use Odyssey. Training will typically begin approximately 3-4 weeks prior to Go-Live date and will continue after the deployment.

As the deployment teams help local courts and clerks prepare for Odyssey, certain operational steps must occur to ensure a smooth transition. One such step is that the County Clerk Financial Accounts must be balanced before Odyssey can Go-Live.

"We know the collaborative process works best, and the more input we get from local staff the smoother the deployment will be," said DePrez. "The pilot deployments taught us the value of training users by roles and responsibilities and that review of procedures by local content experts is critical."

More specific information on costs and funding sources, are available online at

courts.in.gov/jtac.

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A PRIMER ON THE FAMILY & MEDICAL LEAVE ACT (FMLA)

It is hard to believe because it is so ingrained in the workplace vocabulary, but 2008 is the fifteenth anniversary of the enactment of the Family & Medical Leave Act (FMLA). FMLA questions dominate inquiries from the courts about employment law. There are some basic questions about FMLA.

Does FMLA apply to every employer?

No. It only applies to employers with fifty or more employees within 75 miles of the worksite, and the fifty employees must be employed in at least 20 weeks of the preceding calendar year. As a result, many small private employers are not bound by FMLA due to this requirement.

Does FMLA apply to an Indiana court staff of only a few persons?

Yes. The employees are counted as part of city, county or state governmental unit, so FMLA will apply to all courts.

For covered employers, does FMLA apply to all employees?

No. The rights under FMLA do not apply to an employee unless the employee has worked for the employer for twelve months, which do not have to be consecutive. Benefit time, such as sick leave, holidays, and vacation days count as part of the twelve months of employment. Also, if an employee works part of one week, the entire week is counted in the twelve-month determination. If an employee has repeatedly left and returned, the employer counts each week of work, however intermittent, until the 52 weeks of work mark is met.

In addition to the twelve-month requirement, an employee must have worked at least 1,250 hours for the employer, or an average of 25 hours per week during the year. This requirement should only become relevant when you have an intermittent employee who works a few days a week. Many part-time employees will be eligible along with the full-time employees.

How much time off does FMLA mandate?

An employee is entitled to twelve weeks leave in any twelve-month period. There are four different ways to count a twelve-month period, and the employer has the right to choose. However, once the decision has been made, the employer must give notice and use that method for all employees. If the employer decides to switch methods, the employer must give sixty (60) days notice to all employees. If the employer fails to make a written, public choice, an employee is then allowed to choose the method. The four methods are:

1. calendar year;
2. the date on which the employee's leave begins;
3. any fixed twelve-month period, such as fiscal year, the employee's date of hire, or any other specific marker that the employer selects; and
4. a "rolling" year. This is measured by counting backwards from the time that leave is requested. If John Worker asks to take leave December 1st, the employer would look back

at the 52 weeks prior to December 1st to determine if John had already exhausted the twelve weeks of FMLA. If John had taken ten weeks of FMLA the previous February, John would only have two weeks of FMLA left that he could take in December.

For an employer, the best choice is the rolling year, because it prevents stacking or over-lapping of the twelve weeks. With the other methods, John could request twelve weeks of FMLA and before a year had elapsed, take more FMLA because it was counted as a new FMLA year. For example, counting FMLA year as beginning when the employer requests leave, John could take 4 weeks of leave May 1, 2008 and then in March 2009 request eight more weeks. As of May 1, 2009, John's FMLA year would begin again. John could ask for an additional twelve weeks and be off for twenty weeks starting in March 2009.

The Indiana Supreme Court and the Division of State Court Administration use the calendar year method of computation. The trial courts have freedom to make this decision individually, but once the decision is made, the employees need to be given written notice of which method the court chose.

Does FMLA require paid or unpaid time off?

FMLA only guarantees the time off and does not confer any rights to pay. The employer benefit package determines whether any of the time off is with

or without pay. The employer can and should combine with FLMA its own paid benefit time. There is no reason to wait until paid time off is exhausted to begin counting the time off as FMLA.

What conditions are covered by FMLA?

1. The employee's own serious health condition, defined as a condition that requires absence from work for three or more consecutive days, is covered. Pregnancy is an exception to the three day rule. Any care related to pregnancy, including the need for rest, is covered by FMLA. Voluntary cosmetic procedures are not eligible for FMLA, unless inpatient care is required or complications arise.
2. The care for an immediate family member, a spouse, parent, or child, is covered. The care of grandchildren, grandparents, in-laws and other relatives is not covered.
3. The birth of a child to the employee, the adoption of a child by the employee, or placement of a foster child with the employee is covered.

This is a most basic primer. Future articles will address many of the other questions generated by FMLA. Our trial court judges have an open invitation to call me for advice on specific questions related to FMLA.

Trial courts can seek advice on FMLA and other employment law issues by contacting Brenda Rodeheffer directly at (317) 234-3936 or brodehef@courts.state.in.us.

CIRCUIT COURT CLERKS MEET IN FRENCH LICK

A full team from the Division of State Court Administration attended the annual June conference of Clerks of the Circuit Courts in French Lick, offering formal presentations, an Internet Café, and on-site advice on a variety of issues affecting Indiana's clerks.

"The annual conference provides a unique opportunity for the Division to work with clerks from across the state and bring them up to date on new rules, technology tools and to answer questions, provide guidance and get feedback," said Lilia G. Judson, executive director of the Division.

The Division's Judicial Technology and Automation Committee (JTAC) staff hosted an Internet Café and took clerks' photos for a new edition of the Clerks' Directory.

Sessions included demonstrations of the Odyssey Case Management System and other JTAC projects, including the BMV project which allows electronic filing of infraction records, electronic Marriage Licenses and e-Citations. To ensure clerks are aware of the Division of State Court Administration services, several sessions included overviews of its many different programs.

Jim Walker, STAD Director of Trial Court Services, spoke about the need to plan for emergency situations and the Continuity of Operations Plan (COOP) initiative that was begun after the tragedy of Hurricane Katrina. That information really hit home because it was just prior to the start of conference when severe flooding hit much of the state.

"We wanted to highlight the necessity to have plans in place for maintaining operations in a variety of circumstances, including the recent events that affected Indiana and its courts—floods, tornados and earthquakes," said Judson.

One session included a primer on Indiana Trial Rule 77, which governs the clerks' obligations with respect to court records. Kristin Donnelly-Miller, STAD Staff Attorney, outlined ways the Division can provide guidance on confidentiality concerns, case type assignment, bulk data distribution protocol, and court revenue reporting.

Tammy White, a C.P.A. with the State Board of Accounts, presented information on revenue reporting and distribution requirements. The State Board of Accounts and Division of State Court Administration will be working together to make revenue reporting more uniform, saving Clerks time and effort by eliminating duplication of effort.



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To have your name removed from our hardcopy mailing list, contact Deborah Guthrie-Jones at dguthrie@courts.state.in.us.

PLEASE CIRCULATE TO CO-WORKERS

This newsletter reports on important administrative matters. Please keep for future reference. Issues are also available online at:

courts.IN.gov/admin/court-times